IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6876 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VASHISHTANAGAR CO-OPERATIVE HOUSING SOC. LTD - Petitioner(s)
Versus
JOINT SECRETARY (APPEALS) & 1 - Respondent(s)

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Appearance :
MR BJ TRIVEDI for Petitioner(s) : 1,MR JT TRIVEDI for Petitioner(s) : 1,MS JIGNASA B TRIVEDI for Petitioner(s) : 1,
MS MAITHILI MEHTA ASST GOVERNMENT PLEADER for Respondent(s) : 1,
None for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 24/04/2006

ORAL JUDGMENT

1. Rule. Ms.Maithili Mehta, learned AGP waives service of rule on behalf of the respondents -

State Authority. With the consent of the learned advocates for the parties, the matter is taken up for final hearing today.

2. By way of this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the legality and validity of the judgment and order passed by the Joint Secretary (Appeals), Revenue Department, State of Gujarat dated 7.1.2006 passed in Revision Application No.13 of 2005 in dismissing the said revision application confirming the order passed by the Collector, Bhavnagar dated 15.8.2005 by which the Collector, Bhavnagar in Breach of Condition Case has passed the order granting extension of period to put up construction for a further period of one year from 15th August, 2005 and imposing the penalty to the extent of 40 times (pat) i.e. Rs.1,91,400/- imposed under Section-67 of the Bombay Land Revenue Code read with Rule-100 of the Bombay

Land Revenue Rules and the Resolution of the Government in Revenue Department dated 27.8.1980 and 31.3.1992.

3. It appears from the record that by order dated 6.5.1987 the permission was granted by the competent authority under Section-65 of the Bombay Land Revenue Code and granted permission in favour of the petitioner society for putting up construction within stipulated time. It appears from the record that even after 18 years of granting of permission under Section-65 of the Bombay Land Revenue Code, construction was not put up and therefore, the Collector, Bhavnagar initiated the proceedings for breach of conditions and show cause notice came to be issued on 30.6.2005 calling upon the petitioner to show cause as to why the Non Agricultural Use permission should not be cancelled. It appears from the record that the petitioner replied to the said show cause notice vide their reply dated

26.7.2005 and requested for grant of further period of two years so that the members can put up construction. Considering the reply submitted by the petitioner, the Collector, Bhavnagar granted extension of further period of one year from 15.8.2005 and while extending the time limit, imposed penalty to the extent of 40 time / pat which comes to Rs.1,91,416/-. Being aggrieved and dissatisfied with the order passed by the Collector, Bhavnagar dated 15.8.2005 the petitioner preferred revision application before the State Government being Revision Application No.13 of 2005 and the Joint Secretary (Appeals), Revenue Department, State of Gujarat by its impugned judgment and order dated 7.1.2006 dismissed the said revision application confirming the order passed by the Collector, Bhavnagar dated 15.8.2005. Being aggrieved and dissatisfied with the same, the petitioner has preferred the present Special Civil Application under Articles 226 and 227 of the Constitution of

India.

4. At the outset, it is required to be noted that Shri J.T.Trivedi, learned advocate appearing on behalf of the petitioner has submitted that the petitioner has not pressed the present Special Civil Application on merits, however, he has requested that some more time be granted as time has been consumed in the litigation. In the facts and circumstance of the case, the petitioner and its members are granted time upto 31st December, 2006 to put up construction instead of 15th August, 2006 as granted by the Collector, Bhavnagar in its impugned judgment and order dated 15.8.2005. So far as the question with regard to imposition of penalty to an extent of 40 times / pats which comes to Rs.1,91,416/- is concerned, Shri J.T.Trivedi, learned advocate appearing on behalf of the petitioner has submitted that in the facts and circumstances of the case and for the reasons for which the

petitioner and/or its members could not put up construction, imposition of penalty to an extent of 40 times / pat is too excessive. Considering the facts and circumstances of the case, it appears to the Court that instead of imposing maximum penalty to the extent of 40 times / pats, some lesser penalty could have been imposed by the Collector. Under the circumstance, the petitioner is relegated to prefer an appropriate application / representation within a period of four weeks from today before the Collector, Bhavnagar for reduction of penalty pointing out the reasons and in the facts and circumstances of the case, the Collector, Bhavnagar is directed to consider the same sympathetically and to pass an appropriate order with regard to reduction of penalty only within a period of two months from receipt of such an application and/or representation by the petitioner as stated hereinabove.

5.The present petition is accordingly disposed of. Orders passed by both the authorities below are modified accordingly.

6.Rule is made absolute to the aforesaid extent. However, there shall be no order as to costs.

Direct Service is permitted.

[M.R.Shah, J.]

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